

STATE OF MICHIGAN
IN THE SUPREME COURT
ON APPEAL FROM THE
MICHIGAN COURT OF APPEALS
Fitzgerald, P.J., Cooper and Wilder, J.J.

FREDA ALIBRI,

Plaintiff-Appellant,

Supreme Court No. 123091

v.

Court of Appeals No.228921

DETROIT WAYNE COUNTY
STADIUM AUTHORITY,

Wayne County Circuit Court
Case No. 98-818620 CK

Defendant-Appellee.

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DEFENDANT-APPELLEE
DETROIT WAYNE COUNTY STADIUM AUTHORITY'S
RESPONSE TO BRIEF OF NON-PARTY INSTITUTE
FOR JUSTICE AS *AMICUS CURIAE*

ORAL ARGUMENT REQUESTED

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COUNTER-STATEMENT OF QUESTIONS INVOLVED

**DID THE DEFENDANT-APPELLEE, THE DETROIT WAYNE COUNTY STADIUM
AUTHORITY, HAVE THE POWER TO CONDEMN THE PLAINTIFF-
APPELLANT'S PROPERTY?**

The Court of Appeals SAYS, "YES."

Defendant-Appellee SAYS, "YES."

Plaintiff-Appellant SAYS, "NO."

The Trial Court SAYS "NO."

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INTRODUCTION AND SUMMARY OF FACTS¹

This dispute involves real property acquired by the Defendant-Appellee, the Detroit Wayne County Stadium Authority (“Stadium Authority” or “Defendant-Appellee”), during the construction of the Detroit Tigers/Detroit Lions dual Stadium Project (“the Stadium Project”). Plaintiff-Appellant, Freda Alibri (“Ms. Alibri” or “Plaintiff-Appellant”), negotiated an agreement for the sale of certain parcels of real property located in the City of Detroit to the Stadium Authority for more than six million dollars (\$6,000,000.00). In this suit, Ms. Alibri seeks to permanently reclaim a portion of the real estate that she voluntarily conveyed to the Stadium Authority, notwithstanding the facts that (1) the properties at issue are now part of Comerica Park; (2) Ms. Alibri is a seasoned businesswoman who, with the assistance of her attorney, engaged in arms-length bargaining and negotiations with the Stadium Authority for the sale of her properties; and (3) Ms. Alibri knew that property acquired by the Stadium Authority for parking would be managed and operated by the Detroit Tigers.

In its brief as *amici curiae* the Institute for Justice (“IFJ”) has taken the unfounded position that the Stadium Authority had no authority to condemn Ms. Alibri’s property. Further, despite the fact that no condemnation took place, the IFJ has hypothesized that a condemnation of Ms. Alibri’s property by the Stadium Authority, if that scenario had taken place, would have been an unlawful taking for the benefit of a private interest, namely, for the Detroit Tigers. In this response to the IFJ’s brief, the Stadium Authority will demonstrate that the IFJ’s purported legal arguments are nothing more than a recitation of the IFJ’s biased, self-serving opinions which are unsupported by the facts of this case as well as by Michigan law.

¹Due to the page limitation set forth in MCL 7.212(G), the Stadium Authority hereby incorporates by reference the Statement of Facts contained within its Brief on Appeal.

ARGUMENT

I. THE IFJ HAS NOT SHOWN THAT THE STADIUM AUTHORITY DID NOT HAVE THE AUTHORITY TO CONDEMN THE ALIBRI PROPERTIES

As a preliminary matter, the Stadium Authority notes that the IFJ's legal argument regarding the Stadium Authority's inability to condemn the Alibri properties is fundamentally flawed. Without any foundation to support its position, the IFJ states that "the Stadium Authority apparently did not realize that it did not have the power to condemn the Alibri property"² The IFJ claims that it has filed its brief as *amicus curiae* on behalf of Ms. Alibri, yet, the IFJ acknowledges that its "brief does not address any factual disputes between the parties."³ It is undisputed that a legal argument consists of an application of relevant caselaw to a set of facts in support of a conclusion. Given that the IFJ has failed to perform any application of the facts to Michigan law, the IFJ's legal "argument" is nothing more than its unsubstantiated, biased opinion that is of no use to this Court in its analysis of the issues raised by Ms. Alibri and the Stadium Authority.

Since the IFJ has failed to set forth any basis whatsoever in support of its contention that the Stadium Authority had no authority to condemn Ms. Alibri's properties, the Stadium Authority is unable to form a meaningful response. Assuming that the IFJ is relying on Ms. Alibri's theory - that the Stadium Authority could not have condemned the Alibri properties because it did not have funding in hand or a plan in place at the time the parties executed the Option Agreement - the Stadium Authority asserts that the Court of Appeals correctly concluded that the trial court and Ms. Alibri misinterpreted the UCPA which requires

²IFJ brief at p. 8.

³IFJ brief at p. 5.

“funding” and “a plan” *at the time of the filing of a complaint for condemnation*. MCL § 213.55(4) provides in relevant part:

In addition to other allegations required or permitted by law, the complaint shall contain or have annexed to it all of the following:

- (a) A plan showing the property to be taken.
- (b) A statement of purpose for which the property is being acquired, and a request for other relief to which the agency is entitled by law. (Emphasis added).

MCL § 213.55(5) provides in relevant part:

When the complaint is filed, the agency shall deposit the amount estimated to be just compensation with a bank, trust company, or title company in the business of handling real estate escrows, or with the state treasurer, municipal treasurer, or county treasurer. (Emphasis added).

The plain language of the statute is clear: until a complaint is filed, a condemning authority need not have a plan in place or money in hand. In this case, there was no complaint for condemnation filed (nor could there have been because of the language of the Option Agreement). The Court of Appeals properly concluded that the Stadium Authority’s “‘present ability’ to immediately file a condemnation complaint is immaterial.” (Apx. 75a)⁴. The plain language of the statute demonstrates that the Stadium Authority clearly had the ability to condemn the subject property. The IFJ has not set forth any evidence to the contrary.

Moreover, one of the public purposes for which the Stadium Authority was created included the provision of parking for the stadiums. MCL §123.958; (Apx. 2b). Upon its creation, the Stadium Authority was granted the power to acquire property for parking by

⁴All appendix citations refer to the Appendix to the Stadium Authority’s Brief on Appeal.

purchase, construction, lease or condemnation. MCL §123.951-965; (Apx. 3b). Given these facts, the IFJ's assertions to the contrary are markedly incorrect.

II. THE IFJ HAS NOT SHOWN THAT A CONDEMNATION OF THE ALIBRI PROPERTIES, IF IT HAD OCCURRED, WOULD HAVE BEEN UNLAWFUL SIMPLY BECAUSE THE PROPERTY WAS ULTIMATELY TRANSFERRED TO THE DETROIT TIGERS

A. The IFJ Has Failed to Demonstrate Pretext

As noted above, the IFJ's method of legal argument in its brief consists of its making fallacious presumptions having no basis in the facts of this case or Michigan law. In addition to its unfounded assertion that the Stadium Authority could not condemn the Alibri properties, the IFJ also alleges that if a condemnation had occurred, it would have been pretextual because the taking would have been for the benefit of a private party, the Detroit Tigers. Given that a taking did not occur, it is difficult for the Stadium Authority to form a response to an argument premised on facts that do not exist. Nonetheless, Michigan law supports a conclusion that the Stadium Authority's condemnation of the Alibri properties, if it had happened, would have been a lawful condemnation for a public purpose.

The IFJ repeatedly characterizes the Stadium Authority's communications to Ms. Alibri as "pretextual" yet, the IFJ has failed to set forth the "pretext" that it has accused the Stadium Authority of engaging in. Instead, the IFJ identifies a number of cases outside this Court's jurisdiction where a court found pretext in the condemning authorities' takings. Without an application of those cases to the facts of this case to demonstrate the Stadium Authority's alleged pretext, the cases cited by the IFJ are useless to this Court's analysis. Perhaps the IFJ failed to apply the facts and law contained in those cases to the facts of this case because such an application demonstrates the futility of the IFJ's stance on this issue. In each of the cases identified by the IFJ in support of its allegations regarding pretext, the courts found that the

true purpose motivating the condemnation was blatantly contrary to the condemning authorities' stated purpose. Here, there is no absolutely no dissimilarity between the Stadium Authority's representations to Ms. Alibri and the purpose for which her former properties are presently being used.

The Stadium Authority always represented to Ms. Alibri that the purchased properties would be used for public parking in connection with the Stadium. The Stadium Authority never acted in a covert manner. At the time of the negotiations for the purchase of the property, it was public knowledge that the Stadium Authority was in the process of purchasing many parcels of land in an effort to comply with a deadline imposed by the entities involved in this Project. At the time of the negotiations, the Stadium Authority informed Alibri and her attorney, that her property was necessary for, and would be a part of, the Stadium Project. The Stadium Authority paid Alibri the price she demanded for her properties--a price that was in excess of the appraised value. The MOU, which expressly provided that the Tigers would have "the exclusive right to manage, operate and receive all revenues from all the Project Area Parking... ", was a public record to which Ms. Alibri, like any other member of the public, had access. (Apx. 3b-24b).

Mr. Duggan's uncontroverted testimony (Apx. 133a & 134a), outlines the negotiations between the parties. The supporting documents and deposition testimony evince that the Stadium Authority acted within its legal and equitable parameters when it sought to purchase the Alibri property for the Stadium Project. At all times, the Stadium Authority acted pursuant to documentation which is a matter of public record. The valid 1996 Resolution of Necessity and Declaration of Taking addressed the need to acquire property necessary for the implementation of the Stadium Project--the subject properties were included in the Resolution

of Necessity. The testimony of Michael Duggan shows that (1) Ms. Alibi was informed of need for the subject properties, (2) the reasons why the Stadium Authority needed the west side properties, and (3) the Stadium Authority agreed to all of Ms. Alibri's demands.

B. The IFJ Has Failed to Demonstrate a Lack of Public Purpose

Here, the acquisition of land by the Stadium Authority for use for parking in connection with the Stadium was clearly a public use. The Building Authority statute, MCL 123.951 *et seq.*, provides that parking for use in connection with a stadium is a public purpose:

The acquisition of any building or buildings, *automobile parking lots* or structures, recreational facilities, stadiums, and the necessary site or sites for the property, together with appurtenant properties and facilities by any authority . . . constitutes a benefit to and a legitimate public purpose of the authority and the incorporating unit or units. MCL 123.958 (emphasis added).

If the Stadium Authority had condemned Ms. Alibri's properties, the condemnation would not have been improper simply because the property was ultimately transferred to a private party. Contrary to the IFJ's postulation, courts nationwide have repeatedly held that a condemnation is not unlawful simply because the condemned property is eventually transferred to a private entity. The law has long been established that an acquisition funded in whole or in part by a private party does not invalidate the public necessity of the acquisition. *See Union Lime Co v Chicago & Northwestern R Co*, 233 US 211, 34 S Ct 522 (1914); *Pere Marquette R Co v United States*, 154 Mich. 290, 117 NW 733 (1908); *McDonald v Marquette Circuit Judge*, 159 Mich. 367, 123 NW 1112 (1909); *In re Condemnations for Improvement of the Rouge River*, 266 F 105 (ED Mich. 1920)⁵.

⁵*See also, Sinas v City of Lansing*, 382 Mich 407, 170 NW2d 23 (1969)(The elimination of urban blight is an adequate justification for the exercise of the power of eminent domain, even where the acquisition is followed by sale to private individuals.); *City of Oakland v Oakland Raiders*, 32 Cal 3d 60, 73-74, 646 P2d 835 (1982)(Upholding the expropriation of a major league football team and its subsequent sale to a private person as a public use on the theory that the football franchise provided jobs and helped the local economy); *City of Needles*

At the time of the negotiations between the Stadium Authority and Ms. Alibri, the subject properties were to be used for parking within the Stadium Project. At the time of the closing on the Alibri properties, the Stadium Authority had available funding for the purchase of the Alibri east side properties but it had no funding in place to purchase any property on the west side of Woodward. With respect to the funding mechanisms for the Stadium Project, Michael Duggan testified that contributions from the State of Michigan, the DDA and Wayne County were allocated to acquisition and the infrastructure of the Stadium. While the Stadium Authority anticipated that the Alibri west side properties would be used for parking, it did not have funding to purchase those properties. (Apx. 131a-132a). To acquire the money needed to purchase the west-side properties for parking, the Stadium Authority obtained a loan from the Detroit Tigers. This fact, however, does not negate the validity of the Stadium Authority's actions. As noted *infra*, Michigan courts have upheld a private entity providing financing for an acquisition as long as the acquisition is for a public purpose. The MOU expressly provided that the Detroit Tigers would utilize the properties west of Woodward for parking. (Apx. 23b-24b). Whether the west side properties were operated and managed by the Stadium Authority or the Detroit Tigers is irrelevant as long as the properties were used for public parking in

v Griswold, 6 Cal App 4th 1881, 1891 (1992)(Upholding the city's taking of golf carts and other golf equipment owned by a private party for a golf course owned by the city in an isolated desert area as a public use on the theory that the golf course was the cornerstone of the local economy by being the city's primary recreational resource and an important tourist attraction for winter "snow-birds"); *Thornton Development Authority v UPAH*, 640 F Supp 1071, 1077 (D Colo 1996)(Upholding urban renewal authority's condemnation of land for redevelopment as a shopping center despite the fact that the shopping center would be owned by a private entity); *Fleet v Redevelopment Authority of the County of Washington*, 607 A2d 311, 312 (1992)(Holding that fact that private developer would eventually purchase land that had been acquired by condemnation in connection with a redevelopment project, does not, in and of itself, render the taking private); *State v Land Clearance for Redevelopment Authority of Kansas City, Mo.*, 270 SW2d 44, 49-52 (1954), (Upholding acquisition of property by Authority by eminent domain and the subsequent sale thereof to a private redeveloper).

connection with the Stadia. Neither Ms. Alibri nor the IFJ has set forth a scintilla of evidence establishing that the Tigers were the primary beneficiary of this acquisition.

MCL §213.72 provides that “[i]f property is acquired by an agency, the agency may lease, sell, or convey any portion not needed, on whatever terms the agency considers proper.” The Stadium Authority is not doing indirectly what it could not do directly. It had the direct right under the UCPA to sell this property or convey this property to the Tigers in exchange for forbearance on the loan. There is no evidence that these actions on the part of the Stadium Authority were false or misleading. No evidence exists that the Stadium Authority misled Alibri in order to purchase the subject properties. The Stadium Authority’s intention that the subject property would be used for parking for the Stadia was set forth in public records and had also been expressly set forth to Alibri. (Apx. 12b).

III. LIKE THE FOREGOING ISSUES, THE REMAINING ISSUES RAISED BY THE IFJ ARE NOTHING MORE THAN THE IFJ’S BIASED AND UNFOUNDED OPINIONS WHICH HAVE NO BASIS IN FACT OR LAW

The remainder of the IFJ’s brief is an unfounded, irrelevant diatribe against condemnors in favor of condemnees. The IFJ characterizes all potential or actual condemnees as pious, unknowing and unsophisticated victims who have been bullied by their local governments into selling their property. According to the IFJ, no property owner ever voluntarily conveys property to a governmental entity and further, every condemnation is a governmental abuse. In its brief, the IFJ does not consider or review situations, like the one involving Ms. Alibri and the Stadium Authority, where a property owner engaged in savvy contractual negotiations resulting in a financial windfall for the property owner. Ms. Alibri, who is a seasoned businesswoman owning numerous parcels throughout the City of Detroit, used her experience and gamesmanship to secure a deal that (1) prevented the Stadium

Authority from ever condemning the subject properties if the Stadium Authority did not exercise the Option Agreement; (2) assured Ms. Alibri a higher per square foot price if the Stadium Authority purchased the neighboring West Elizabeth properties owned by the Abrahams and (3) netted Ms. Alibri nearly \$50 per square foot for a bunch of surface parking lots.

The IFJ traverses interminably about alleged abuses of eminent domain by government. While policy considerations should not be factored into this Court's decision, the IFJ contends (with no recognized authority) that legal representation and attorneys fees are an issue to be considered in this Court's evaluation of Ms. Alibri's voluntary sale of her property to the Stadium Authority. This issue is tangential; it is addressed here because it is illustrative of the IFJ's flawed misconstruction of Michigan law. The IFJ has characterized the Stadium Authority as the government behemoth and the corporate demon against the downtrodden property owner. Without debating the truth of this mischaracterization, Michigan is unique in one sense - Michigan law has evolved in a manner that provides the maximum protection to property owners. It is not true that the property owners are generally hapless souls whose rights have been laid bare to the power of the sovereign and who are unprotected by the law in most condemnation cases.

If a property owner successfully challenges the necessity or the legitimacy of an acquisition, the owner's actual attorneys fees are reimbursed by statute. MCL 213.66(2) and (3). If the case proceeds beyond necessity and the property owner receives an increased value for the property above the condemnor's appraised value, in Michigan, not only does the condemnor pay for its own attorneys and deposit and pay the estimated just compensation before filing an action, it also pays the actual reasonable attorney fees of the property owner.

Id. These attorneys fees are capped at one-third of the amount by which the ultimate award (the trier of facts' determination of fair market value) plus interest exceeds the condemnor's estimated just compensation. *Id.* Given these facts, it is undisputed that Michigan law offers extensive protection to property owners subject to condemnation.

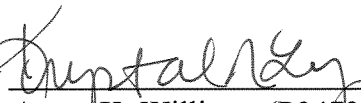
CONCLUSION

The IFJ has expounded a number of baseless conclusions regarding the illusory consequences of the Stadium Authority's purchase of Ms. Alibri's property for use as public parking in connection with Comerica Park and Ford Field. While the IFJ may disapprove the sales transaction that Ms. Alibri voluntarily negotiated for and engaged in, the IFJ has failed to set forth evidence which demonstrates (1) that the Stadium Authority did not have the authority to condemn the subject properties; (2) the Stadium Authority's stated purpose of acquisition for public parking was a pretext for an unlawful nonpublic purpose; and (3) that the subsequent transfer of the subject property to the Detroit Tigers was not incidental to the public purpose of providing public parking in connection with the Stadia. The IFJ's failure to apply recognized legal authority to the salient facts of this case renders its "brief" incredible and useless to this Court in its assessment of this case.

Respectfully submitted,

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